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Treaty Law *vs.* The Constitution

The Threat . . . The Remedy

LEGISLATIVE DEPARTMENT
CHAMBER OF COMMERCE OF THE UNITED STATES • WASHINGTON, D. C.

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Testimony presented to Congress on behalf of the Chamber of Commerce of the United States.

March, 1953

LEGISLATIVE DEPARTMENT

CHAMBER OF COMMERCE OF THE UNITED STATES • WASHINGTON, D. C.

How Rights Could Be Lost

STRONG FORCES of the International Labor Organization, in which the United States is outnumbered by countries with socialistic leanings, try to extend, through treaty, government control of maternity care, collective bargaining, life insurance. . . .

WORKING on an economic and social "rights" treaty, the United Nations' Human Rights Commission adopts amendments which, Chairman Charles Malik of Lebanon says, respond "for the most part more to Soviet than to Western promptings" . . .

A CALIFORNIA COURT challenges a long-standing state law because it conflicts with provisions of the United Nations Charter, a treaty. . . .

A U. S. SUPREME COURT minority contends that Presidential seizure of steel mills without recourse to Congressional authority is justified because of U. S. participation in the UN and North American Treaty Organization. . . .

Those are among incidents contributing to today's growing public alarm over the expanding scope of international organizations and agreements, with their potential effect on rights guaranteed by our Constitution.

That alarm has prompted Senator John W. Bricker of Ohio and 63 other Senators, as of this writing, to propose a resolution (S. J. Res. 1, 83rd Congress) to amend the Constitution so that provisions of treaties could not override those of the Constitution without Congressional sanction.

And because of the present-day situation, the Chamber of Commerce of the United States has adopted policy supporting—and is vigorously urging enactment of—appropriate legislation.

The Threat—

Today's situation, threatening individuals' rights under the Constitution, has arisen for two main reasons.

One is the broadening reach of international organizations—such as the ILO and certain other UN affiliates and components—and proposed international agreements or treaties. While the UN, for instance, is generally thought of as a peace-making organization, some

of its agencies are primarily concerned with domestic affairs—far afield of the UN's commendable collective security efforts.

The other basic reason for today's threat is the new concept of the treaty—i.e., interpretation of the treaty power as affecting relations between a citizen and his government as well as between governments or heads of governments.

"There is no longer any real distinction between 'domestic' and 'foreign' affairs," a State Department publication stated in 1950.

The authors of our Constitution not only believed there was such a distinction, but also expected that it would endure for the life of the Constitution.

It was with such conviction that they fashioned the Constitution to declare that treaties should become part of the supreme law of the land, as they do today. It is hardly conceivable that those men, so jealous of individual freedom and domestic sovereignty, would have elevated the treaty to such eminence if they had suspected that the treaty power might some day be interpreted to affect an individual's relations with his government.

Had they harbored such suspicion, it is resonable to suppose—in view of their dedication to liberty—that they would have required implementation by Congress before a treaty could have a force of *internal law*. In other words, they would have required that before the provisions of a treaty could become effective as domestic law, they would have to be duplicated in an act of the national legislature.

The United States is the only major country, and one of the very few at all, which does not have such a requirement today. In this country, a treaty that is approved by the President and by two-thirds of the Senators present and voting becomes part of the supreme law of the land.

There has been much argument, but never a clear-cut decision, as to whether the provisions of a treaty so approved can override those of the Constitution itself.

"Treaties make international law and also make domestic law," Secretary of State Dulles has said, "and they can cut across the rights given the people by the Constitutional Bill of Rights."

The Remedy—

A Constitutional amendment of the type proposed by S. J. Res. 1 would end the argument of treaty powers vs. Constitutional rights. It would erase the question mark and plug the loophole by requiring Congressional implementation of a treaty before it could become effective as *internal law*.

That would put the United States on a par with other major countries in this respect.

Such an amendment also would outlaw any treaty provision which denied or abridged any Constitutional right.

This amendment would prevent any foreign power or international organization from supervising, controlling or adjudicating U. S. citizens' Constitutional rights within this country or any other matter essentially within the domestic jurisdiction of the U. S.

It would subject executive agreements to the same limitations as treaties.

Many supporters of this type of amendment also would stipulate that in implementing a treaty Congress could not pass any legislation which it could not pass under its Constitutional powers in the absence of treaty. This would preclude enactment of legislation to implement a treaty which would encroach on the authority of the states. The objective of such a provision would be to maintain the Constitutionally founded balance between the states on the one hand and the federal government on the other.

Testimony—

When legislation to amend the Constitution has been approved by a two-thirds vote of the House and Senate, it then must be approved by three-fourths of the states.

This booklet is being published for long-range use in increasing public understanding of the issues involved in the effort to safeguard the rights of individuals under the Constitution.

The testimony contained in the following pages was presented to a subcommittee of the Senate Judiciary Committee March 4, 1953 on behalf of the Chamber of Commerce of the United States by:

Charles S. Rhyne, attorney, Washington, D. C.

W. L. McGrath, president, Williamson Heater Company, Cincinnati, Ohio; member of the United States Employer Delegation to the International Labor Organization, 1949-1952 inclusive.

L. Roy Hawes, dairy farmer; Sudbury, Massachusetts; agricultural advisor in the United States Employer Delegation to the International Labor Organization, 1950 and 1951.

Statement of CHARLES S. RHYNE for the Chamber of Commerce of the United States before the Subcommittee of the Senate Committee on the Judiciary Considering S. J. Res. 1 and S. J. Res. 43 March 4, 1953

Mr. Chairman and Members of the Committee:

My name is Charles S. Rhyne. I am a lawyer practicing in Washington, D. C. I have been requested by the Chamber of Commerce of the United States to present to you the official declaration of policy adopted by the Chamber which relates specifically to the subject matter covered by S. J. Res. 1 and S. J. Res. 43 upon which this Subcommittee is holding hearings. I also am to present some of the reasons why this declaration was adopted.

The declaration is as follows:

> *"No provision of a treaty or of an executive agreement that alters or abridges the Constitution of the United States should become effective unless such alteration or change is embodied in a Constitutional amendment adopted and ratified in the manner provided in the Constitution for its amendment.*
>
> *"No provision of a treaty or of an executive agreement that alters or abridges the rights protected by the laws of the United States or the Constitutions or laws of the several states should become effective unless and then only to the extent that Congress shall so provide."*

This declaration was adopted unanimously by the 40th Annual Meeting of the Chamber of Commerce of the United States on April 30, 1952. That Annual Meeting was attended by representatives of 3500 Chambers of Commerce and trade associations with a membership of approximately 1,374,000 businessmen. I am a member of the Board of Trade of the District of Columbia which is one of the organizations represented in the Chamber's membership.

The unanimous action of the Chamber's 40th Annual Meeting in adopting the above quoted declaration of policy was taken upon the report and recommendation of a special committee which had been appointed by the Chamber to study the effects of the treaty process on domestic law. Attached to this statement, and marked as Exhibit A, is a list of the members of that special committee. It will be noted that

most of these members are nationally recognized experts in the field of international law.

In reviewing the reasons why the members of the Chamber of Commerce of the United States adopted the above quoted declaration of policy I report the following:

Domestic and Foreign Affairs

The members of the United States Chamber of Commerce have watched with pride the great scientific achievements of recent years (such as the airplane, radio and television) which have conquered the problems of distance and in a literal sense shrunk nations to neighborhoods. Coupled with their pride in these scientific achievements, however, these members have experienced a growing alarm over the development, chiefly under the sponsorship of the United Nations and its specialized agencies of the idea that the distinction between domestic and international affairs has been wiped out. This alarm grew tremendously when nation-wide attention was called to an official statement by the Department of State in 1950 that "there is no longer any real distinction between domestic and foreign affairs." (St. Dept. Publ. 3972, Foreign Affairs Policy Series 26)

The great effusion of treaties designed to solve many of our unsolved domestic problems—as well as to offer new solutions to those for which solutions have been devised domestically—has gradually brought home to the businessmen of the United States that while they have in the past looked for regulatory law relating to their businesses in local ordinances, state statutes and Federal statutes, they now must focus their attention upon a fourth many-chambered legislative body, which is busy grinding out proposed "treaty" law. When our triple-layer governmental system has added to it this fourth branch the results can be startling in impact.

Difficulties for Business

Businessmen who have found difficulty in learning just what federal regulations affect their business are even more baffled in trying to discover the provisions applicable to their business in the vast and uncharted field of "treaty" law.

I understand that the approximately 100 conventions of the International Labor Organization will be described in other testimony which is to be presented to this Committee. Those treaties or conventions cover a vast multitude of domestic subjects of vital concern to businessmen, such as wages and hours, labor clauses in public contracts, safety

provisions in the building industry, social security, compulsory health insurance, and almost every other conceivable interest of business.

Time permitting I could go into many other fields of vital concern to industry to point out things which alarm businessmen, but I will mention only two in the fields of aviation and copyright law. I believe they illustrate the dangers inherent in giving effect to treaties which override domestic law.

Aviation Treaties

The International Civil Aviation Organization which has its headquarters in Montreal is busy developing new conventions and in rewriting certain existing conventions which have domestic as well as international effect in the field of air transportation. And, of course, most of these relate solely to and are essential to foreign air commerce. But some have drastic domestic effects.

I cite as examples the Warsaw Convention which limits recovery for death or personal injury caused by an airline's negligence in international air transportation to a total of $8,291.87 per passenger and the proposed Rome Convention which proposes drastic limitations on recovery of damages for death or injury to persons or property on the surface of the earth caused by airplane crashes. In the case of the Warsaw Convention a person can board an airplane in Los Angeles bound for London along with 50 other persons who are going to New York and if the plane crashes, the 49 domestic passengers may recover an unlimited amount for negligent injury or their survivors an unlimited amount for their death, but the person bound for London—even though the crash occurs through the negligence of the airline as the plane takes off from the Los Angeles airport—can recover no more than the $8,291.87 for injury through the airline's negligence; nor may his survivors recover more than that amount for his death unless they achieve the almost impossible task of proving "willfull misconduct." The Supreme Court of the United States has refused to disturb a decision holding this Convention is self-executing and in full effect as domestic law, *Lee* v. *Pan American Airways,* 300 N. Y. 761, 89 N. E. (2d) 258; Cert. Den. 339 U. S. 920.

Damages

The proposed Rome Convention provides that damage to persons and property on the earth's surface from crashes of airplanes on international flights would be limited drastically to limits ranging from $33,000 to $800,000, depending upon the weight of the aircraft. These amounts are so negligible as to be entirely unreasonable when one

considers the possible total damage such an airplane could do. Some cities owning airports are up in arms against this proposed Convention. They have airport buildings worth millions which are exposed to destruction by these aircraft and $33,000 would not be even a meager start toward their reconstruction. Should such an airplane destroy a large factory or even a private home it is obvious that the limit is too low. True it is that the United States representatives have not yet signed this Convention but the Convention is complete and it is argued that the liability limits are high enough in foreign nations and the United States should not stand in the way of "progress" just because our standards of living and values are higher than in other countries.

Copyright Convention

There is pending a proposed Universal International Copyright Convention which may vitally affect copyrights in this country. It would change our federal law and supersede it almost entirely. There are basic differences in the protection accorded copyrights under the governmental systems of other nations and our own laws on this subject and this Convention is a compromise between our system and the systems of other nations. This work is being done by a committee under the sponsorship of the United Nations' Educational, Scientific and Cultural Organization which is carrying on broad studies in the fields of education, science and culture. For the first time in any treaty, to my knowledge, there is an express provision prohibiting reservations. Article 20 provides that "reservations to this Convention will not be permitted." If our Senate decided to ratify this treaty and follow the idea suggested by some that our domestic law be protected by "reservations" so provided, here such protections are not allowed.

Scope of Problem

These few illustrations demonstrate beyond question that business has a vital need for protection against domestic effects of "treaty" law. And when one adds to these illustrations the subjects being covered by all the other treaties now being proposed or considered, the size of the problem becomes tremendous in scope from the viewpoint of businessmen. With so many committees, commissions and groups working in this field it is relatively impossible to get an accurate picture of all the things that may be thought up for incorporation in international agreements which may directly or indirectly affect business.

A major problem for the businessmen of America is how to keep watch over the United Nations and that organization's specialized agencies which are taking action or planning action on matters affect-

ing private industry in our nation. I understand that the proposed Covenant on Human Rights has been thoroughly discussed by other witnesses. The social and economic rights there proposed to be guaranteed to the peoples of the world would, if made effective in our nation, destroy in many respects vital parts of our free enterprise system. Even the most avid supporters of the human rights program concede that it should not cover economic and social rights. That Covenant is under the sponsorship of the United Nations' Social and Economic Council.

The United Nations also has many other committees hard at work on other economic and social problems of the world.

Specialized Agencies

Further, there are many more specialized agencies, which are independently established international organizations affiliated with the United Nations, not yet mentioned, such as the International Refugee Organization, the World Health Organization, the Food and Agriculture Organization, the International Monetary Fund, the International Bank for Reconstruction and Development, the Intergovernmental Maritime Consultative Organization, the International Trade Organization, the International Telecommunications Union, the Universal Postal Union, and the United Nations' Educational, Scientific and Cultural Organization. In addition, many of the above create their own special agencies and committees. By merely glancing at the names of these organizations it is possible to get an idea of the unlimited activities they carry on which are of interest to businessmen.

It is certainly true that these organizations may do much of great benefit to business but they can also do tremendous harm. Harm that is often accomplished before it is discovered. And this great expansion of treaty sponsoring groups when coupled with the idea that there is no longer any difference between international and domestic affairs, and the idea that simply by calling any domestic subject "international" it can be put into a treaty and made the "supreme law" of our land under our Constitution, is novel to say the least. But there can be no doubt but that the basic idea back of these conventions is the building up of a vast body of "treaty" law of vital effect upon the businessmen of our Nation.

200 Treaties

It has been estimated that there are some 200 treaties affecting businessmen in one way or another now either proposed or under active consideration by the United Nations and its specialized agencies. It

is also estimated that last year the United States was represented at more than 3,000 international conferences, committee meetings and discussions. Since these meetings and conferences are held all over the world under circumstances and arrangements which are not too well known to businessmen, it is obvious that the creation of an effiective "watchdog" in this field is an almost impossible task. This means that many of these conventions will be sprung full-bloom upon us without business interests being afforded an opportunity to oppose, in the drafting stage, any provisions believed to be injurious to or destructive of any part of our free enterprise system.

These are but a few of the reasons which have been called to my attention indicating the great interest of businessmen in the proposed constitutional amendments now pending before this Committee. These and similar reasons motivated the adoption of the policy plank of the Chamber of Commerce of the United States quoted at the outset of this statement.

Adequacy of Treaty Clause

It seems that we have now reached a point in our history where the great increase in international treaties and the broad scope proposed for them makes it wise to pause and consider whether our treaty making machinery is adequate to cope with the problems created by this accelerated use of that type of legislation. It is this revolutionary change in the concepts and functions of treaties and the great increase in proposals to delegate domestic matters to international organizations which indicate that the treaty provisions of our Constitution which have served well in the past are not adequate for our present situation. Such thinking was the reasoning back of the Chamber of Commerce of the United States policy planks quoted above.

There is no question but that up until recent years treaties have concerned themselves with external or foreign affairs in the traditional concept of those terms. An occasional unusual instance can be dug up to the contrary but basically the traditional idea was followed. In the past there was no great body of "treaty" law suddenly being urged upon us covering almost every conceivable domestic problem. Now we have the idea that "there is no longer any real difference between domestic and foreign affairs" being urged. And when that idea is coupled with the statement of the Honorable John Foster Dulles in his speech to the American Bar Association in April, 1952, that a ". . . treaty can override the Constitution" and his further statement in that address to the effect that ". . . treaties can cut across the rights given the people by the Constitutional Bill of Rights," it seems that

we have now reached a point in our history where we should re-examine the treaty-making power and the agency which represents us in performing that function to determine whether that agency affords the people of our nation the basic protections which they are inherently entitled to under our system of government.

International Age

We all know that the treaty-making agency of our country is the President plus two-thirds of the Senate, present and voting. Up until this time in the history of our nation perhaps it is arguable that this treaty-making agency has been adequate for our needs. But in the "international age" in which we now live with its great emphasis upon international relations and the great new volume of "treaty" law already referred to pressing upon us for consideration, it seems appropriate to re-examine the adequacy of that agency in the light of the current circumstances.

In re-examining the adequacy of our treaty-making agency it seems appropriate to return to some basic principles of our system of government. When that is done, we find that our Constitution was deliberately and carefully designed to assure our people of the protection and retention of certain inalienable and inherent rights which they have as against the Congress, the President and all other government officials. Under our system no government official is trusted with unlimited powers. Our people have confidence in Constitutional restraints above all confidence in individuals. Ours was, in fact, the first nation in all history ever founded upon the principle that the people as individuals are endowed with these certain inherent and inalienable rights as to life, liberty and property, including the right to local self-government. Theretofore, in the history of the world, kings and governments had granted freedom to their individual citizens only when forced to do so. Power flowed down by *grace* of the king or government to the people. Ours is the *reverse* of that system as all power under our Constitution is inherently in and flows from the people to government. It has been well said that in early history one reads a lot about the divine rights of kings but not until our Constitution did we have a government founded on the divine rights of the people.

Delegation of Power

The idea that the people are the reservoir of power is a basic tenet of our government. The people in our country have delegated certain of their powers to the federal government, to state governments and to their local governments. But the people can take those powers back

or change and adjust them to new circumstances and this they have done time and time again. In fact, twenty-two amendments have been adopted to our federal Constitution.

In the beginning our federal government was in the main concerned with foreign affairs and national defense. The state governments were primarily concerned with legislative action enabling local government to function rather than the administrative aspects of government. Local government was essentially the level of government which levied most of the taxes, collected most of the revenue, and carried out most of the administrative functions of government. Governmental problems were few in number and simple in character. Economic and social life was organized largely on a local basis and the functions of self-government were of local interest only. It is obvious that these conditions have long since passed and there has been a necessary reconstruction of the machinery of government all along the line.

There has been agitation against expansion of state government and state usurpation of local governmental functions. "Home rule" for local government is a theme song in many states today. There has also been much concern at the great swallowing up of state and local functions by our federal government on the ground, among others, that this removes the solution of state and local problems a long way off to Washington. But now the problem is one of transportation of those problems to new and often strange international forums which generally meet in far distant places, overseas.

Governmental Changes

The problem must be studied in the light of the governmental changes which have moved the solving of problems from local to state and now to federal agencies. Changes which have gradually but surely centralized government in Washington. Are we on the threshold of an era when the solution of our domestic problems will be moved to an international body? One can agree that in the present state of the world there is greater need for international agreements, but what is wrong with re-evaluating and re-constructing our treaty-making agency so as to afford our people the greatest possible protections under these circumstances.

Under our system of government the people possess all individual rights and these rights are protected against governmental action by our Constitutional Bill of Rights. It has been suggested that while under the First Amendment the whole "Congress may make no law" which abridges the "freedom of speech or of the press," or freedom to

exercise religious views, our treaty-making agency consisting of the President plus two-thirds of the Senate, present and voting, could by treaty create a law doing exactly that. In support of this idea it is said that the First Amendment of the Constitution runs against the "Congress" and not against our treaty-making agency.

Loophole

It has also been pointed out that no treaty has ever been held to be unconstitutional and that the Constitution contains no express limitation on the treaty power. And while there are some who say a treaty violating the Bill of Rights would be held unconstitutional, it seems well to end any dispute by closing this possible loophole now rather than taking a chance on the outcome of that dispute. With the new and greatly expanded concepts of subjects appropriate for treaty-making this "loophole" through which our peoples' basic rights might be destroyed by our treaty-making agency should be closed. The best way to do that is by a Constitutional amendment as recommended under the first part of the Chamber's policy plank here presented to the Committee.

To render treaties non-self-executing as domestic law as the Chamber's policy plank proposes would not tie the hands of our State Department. That Department could make as many treaties on as many different subjects as it believes our nation requires. But under this plank those treaties could not create or destroy domestic rights unless and until Congress so provided by express legislation. In this way we will know when and how treaties affect domestic rights. At present, because of lack of clarity of court interpretations on the subject, one cannot be sure which treaties are self-executing, or which parts of treaties are self-executing, and thus domestic law from the time of ratification.

Legal History

To the historical trends mentioned one must add our legal history to achieve a proper perspective. There one finds that since the opinion in *Missouri* v. *Holland*, 252 U. S. 416, was announced in 1920 a great debate has raged over the decision then made that the President and two-thirds of the Senate could by treaty add to the Constitutional powers of the federal government at the expense of the states.

Up until the present world situation the debate has been largely academic, because treaties have in the main been confined to our traditional concept of the treaty power. But with that concept no longer accepted in certain quarters and the idea so well expressed by the

Honorable John Foster Dulles that "treaties can override the Constitution" we have the problem of preventing such overriding except where the people want the Constitution amended. And the only sure way of knowing that the people understand and approve a Constitutional amendment is by following the amendment provisions of Article V of the Constitution rather than have the President and two-thirds of the Senate do the amending in the guise of a treaty. A treaty is to many a mysterious and little understood document but all can come to a knowledge and understanding of a Constitutional amendment. A proposed Constitutional amendment not only travels through both houses of the Congress but also to all of the state legislatures. This means widespread newspaper and other coverage not only of the hearings and debates in Congress but also of the hearings and debates in State legislatures. Such widespread attention and publicity is not generally given to treaties before Senate ratification.

Presumably the statement of the Honorable John Foster Dulles about treaties "overriding the Constitution" was premised upon the statement of Mr. Justice *Holmes* in *Missouri* v. *Holland* (p. 433) that:

> "Acts of Congress are the supreme law of the land only when made in pursuance of the Constitution, treaties are declared to be so when made under the authority of the United States."

Obviously "under the authority of the United States" means the President and two-thirds of the Senate, present and voting.

Amendment by Treaty

If we are going to have our Constitution overridden it seems only logical that the people of the nation should be alerted to that fact by having the action taken under the amendment procedure provided in Article V of the Constitution. True the amending procedure is purposely made slow and difficult but that was to provide added and adequate protection for the people. Such safeguards do not surround our present treaty-making agency. And as already stated a treaty can become the supreme law of the land now with very little publicity so that the people hardly understand that it is under consideration, while Constitutional amendments receive nation-wide publicity and attention. It is doubtful that anyone can logically argue that a treaty which overrides the Constitution would or could receive the same notice and understanding of our people as a Constitutional amendment.

It should also be pointed out that while under our Constitution all

treaties are the "supreme law of the land,"[1] in no other major nation of the world does a treaty become domestic law without legislative action expressly making it domestic law. In Great Britain, for example, ratification of a treaty gives it effect only as external law. To give a treaty domestic or internal effect requires express adoption of a legislative act by the Parliament so providing.

Protection for Business

The obvious advantage to businessmen from placing our nation on a par with other nations is quite apparent. Mention has been made of the estimated 200 pending or proposed treaties and the estimated 3,000 meetings and conferences on international matters last year. It is a virtually impossible task to protect the interests of the businessmen of America by adequate representation on or before the multitudes of commissions, committees and conventions presently drafting proposed treaties and executive agreements. But the businessmen of our nation can be assured of consideration of their views if their domestic interests can only be affected by action of the Congress. It is also quite certain that the requirement of such congressional action protects against unintentional alteration of the legal rights of our people through treaty language not completely thought out in hurried international conferences, or based upon information which is incomplete because the business or other viewpoints of our people were not adequately presented or considered.

Legal Principles

It should be frankly stated further that the legal principles applicable to treaty law have not been completely settled by our courts. And as already pointed out, our Constitution contains no express definitions of or limitations on the treaty power to aid the courts on unsettled questions. The principle of *Missouri* v. *Holland* is clear enough insofar as it upholds the overriding of state law by treaties covering matters previously within the domestic jurisdiction of the states. But the law on executive agreements is largely dictum based upon statements in *United States* v. *Curtis-Wright Export Corporation,* 299 U. S. 304 and other cases to the effect that such power does exist.

While the express nullification of state policy and law by executive agreement was upheld in *United States* v. *Pink,* 315 U. S. 203, the nature and extent of the power to make such agreements has never

[1] Article VI of the Constitution provides: ". . . all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land, and the judges in every state shall be bound thereby, any thing in the Constitution or laws of any state to the contrary notwithstanding."

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been fully explored by the courts. The use of executive agreements to by-pass the treaty power is dangerous as it leads to one-man government. And the tremendous increase in the use of this type of agreement when coupled with the dispute over its nature and permissible use is again reason for affirmative action to end the uncertainties. While no informed person accepts the extreme view urged by some that executive agreements and treaties are interchangeable, the mere assertion of this erroneous idea plus the hazy state of the law in this field makes a constitutional amendment most desirable.

Conclusion

Because the present world situation requires an increased use of international agreements and because the subject matter of such agreements has been tremendously broadened to cover almost all social and economic problems of our day, our nation has reached a time in its history when our Constitutional provisions governing the making of treaty law require extensive overhauling to meet current needs. Businessmen of the nation are greatly concerned at the flood of arguments vitally affecting domestic rights and property which is pouring out of the United Nations and its specialized agencies in an ever-increasing stream. They know it is virtually impossible to cover all of the hundreds of conferences held each year all over the world and there to effectively protect their interests. They believe that the best answer to these problems is in adoption of a Constitutional amendment which prevents treaties from overriding the Constitution and which provides that treaties will not become domestic law—to either create or destroy rights and property interests—until and unless and only to the extent that the Congress incorporates them into domestic law.

The policy here recommended by the Chamber of Commerce of the United States will leave the treaty-making power in full force and effect as to all matters genuinely within the sphere of international agreements. This policy will not affect the United Nations' collective security efforts which everyone applauds. But it will stop the unwitting, or intentional, change or destruction of domestic rights in the great outpouring of new proposed treaties, by virtue of our Constitution's "supremacy" clause. A Constitutional amendment will achieve an immediately effective result by ending all the uncertainties in this field created by differing views, unclear court decisions, and absence of authoritative court decisions on important questions. Only in this way will our system of free enterprise, the keystone which makes ours the greatest nation on earth, be adequately protected in a world where peace or war depends upon our system keeping us the strongest nation on earth.

Exhibit A

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March 3, 1953.

Statement by W. L. McGRATH, President, The Williamson Heater Company, Member of the 32nd (1949), 33rd (1950), 34th (1951) and 35th (1952) United States Employer Delegation, International Labor Organization, for the Chamber of Commerce of the United States, before the Subcommittee of the Senate Committee on the Judiciary Considering S. J. Res. 1 March 4, 1953

Mr. Chairman and Members of the Committee:

Before I discuss Senator Bricker's proposed amendment to the Constitution, I want to tell you a little about myself.

My name is W. L. McGrath. I am President of The Williamson Heater Company of Cincinnati, Ohio. I was born in Cincinnati, got a job in my company 32 years ago, and I've been there ever since. Our company makes furnaces. Right now we are also fabricating armor plate and jet engine containers. We employ about 750 people. I am here testifying for myself and the Chamber of Commerce of the United States.

My discussion will deal primarily with matters essentially within the domestic jurisdiction of the United States which are seriously affected or jeopardized by so-called treaty law.

For the last four years I have served as a member and vice-chairman of the United States Employer Delegation to the Annual Conference of the International Labor Organization. I was nominated for this service by the Chamber of Commerce of the United States and the National Association of Manufacturers.

During the first three conferences, and part of the fourth, I sat on its Committee on the Application of Conventions, which reviews the extent to which nations which are members of the ILO have actually put into effect the ILO international laws which they have ratified as treaties. This last summer I spent part of my time sitting on a conference committee engaged in drafting a new proposed international law, which I shall later describe to you, dealing with pregnancy and maternity. This experience has given me a rather thorough insight into the nature and intent of the ILO. And I can assure you that we need go no further than the ILO to illustrate the growing threat of

the use of treaties as a means of transferring legislative authority over our domestic affairs from our own law-making bodies to an international agency.

ILO Conventions

The International Labor Organization, now affiliated with the United Nations, has been in existence for 35 years. During that time it has passed 103 conventions—which are, in effect, drafts of international laws, and which, when ratified by member nations, stand as treaties among the nations which ratify them.

The United States has already ratified 10 of these conventions. Nine of these dealt with maritime matters. The other represented adoption of a revised ILO constitution. That leaves 93 conventions—that is, proposed international treaties—to be considered by our federal or state governments.

Exhibit No. 1. Book entitled Conventions and Recommendations 1919-1949, published by the International Labor Organization, Geneva, Switzerland.

I would like to introduce this book as Exhibit 1 of my testimony. The title is Conventions and Recommendations 1919-1949 published by The International Labor Office. This book contains 98 of the 103 Conventions—draft treaties enacted and approved at ILO conferences between the period of 1919 and 1949. Also it contains 87 recommendations similarly approved during the same period. This book might be referred to as the Blackstone of international law dealing with labor, social and cultural legislation for the member nations of ILO, each convention being drafted into complete legislative texts by this so-called world parliament.

U. S. Obligations

In 1934, when the United States first became a member of the ILO, the United States was not bound by convention procedure, and joined the ILO on the basis that any proposal of the ILO would serve merely as a recommendation in the United States.

The joint resolution of the House and the Senate ratifying U. S. membership, passed in 1934, contained this paragraph:

> "Whereas special provision has been made in the Constitution of the International Labor Organization by which membership of the United States would not impose or be deemed to impose any obligation or agreement upon the United States to accept the proposals of that body as involving anything more than recommendations for its consideration * * *."

But when, in 1948, we approved the present ILO constitution, this act put us on the same basis as other federal countries with respect to ILO conventions.

Under the ILO constitution, once a convention has been passed by the ILO each member country is supposed to submit it to its own treaty-ratifying authority.

There are therefore now pending 93 proposed ILO treaties, which under ILO procedure could be submitted to our Senate, or to the states, for ratification or implementation. In fact several of these conventions were, as you know, submitted to the Senate by ex-President Truman. Conceivably any or all the rest of them could be submitted at any time.

Treaty Subjects

What is the subject matter of these proposed treaties? I shall not attempt to go through the whole list, but will merely cite, for purposes of illustration, some of those covering matters which I would certainly consider to be "essentially within the domestic jurisdiction of the United States."

There are now in existence ILO conventions—that is, draft treaties —ready for submission, dealing with the following subjects:

Safety provisions in the building industry.

Gathering of statistics on wages and hours in mining, manufacturing, building and agriculture.

Government regulation of written contracts of employment of indigenous workers.

Government regulation of hours of work and rest periods of bus and truck drivers.

Medical examination of children employed in industry.

Freedom of association of employees and protection in the right to organize.

The setting up of a federal employment service.

Regulation of night work of women employed in industry.

Labor clauses in public contracts.

Regulation of methods of payment of wages.

Government regulation of employment agencies.

Minimum wages in agriculture.

Equal pay for men and women for equal work.

Holidays with pay in agriculture.

Social security.

Government benefits for maternity.

Debate

Among the ILO Conventions submitted by Mr. Truman and now pending before the Senate Foreign Relations Committee are: Convention 63, concerning statistics of wages and hours of work in the principal mining and manufacturing industries, including building and construction and in agriculture, Convention 87, concerning freedom of association and protection of the right to organize, and Convention 80, concerning the organization of the employment service.

It may be hard to realize, gentlemen, that the International Labor Organization, with delegates from some 60 nations, debates, for a whole month each year, the actual nature and wording of proposed standard international laws covering subjects of this sort, which we in our country would consider, in many cases, even more appropriate for state than for federal action. But such is the case.

Furthermore, a great many countries of the world, especially the socialistically inclined nations, take these ILO conventions very seriously, put many of them into effect by implementing legislation, and then ratify the conventions by their ratifying authorities. These ILO conventions in fact set the pattern for a great deal of domestic legislation in countries all over the world.

Political Complexion

This situation is alarming because of the change in the political complexion of the ILO which has occurred chiefly during the last decade.

In its earlier years the ILO devoted its efforts to matters dealing directly with labor and did excellent constructive work. Its objective was that of endeavoring to raise living standards of employees all over the world, get them better working conditions, fuller recognition of their rights, etc.

However, as state socialism came into the ascendancy in Europe and the concept of the planned economy gained broad political acceptance, the ILO stepped beyond the field of labor proper into the field of government itself; and under the pretext of "helping the working man," has put forward a whole series of proposals, which, if adopted and implemented in member countries, would of necessity force their Governments into a socialistic mold.

The ILO is today, in my opinion, almost completely in the hands of a socialistic government-labor coalition, which apparently has as its

objective the enactment of socialistic legislation, standardized along ILO lines, in the largest possible number of countries in the world. Their interest is to get these laws on the statute books. Whether or not they are actually made effective today is apparently secondary. Once a law is passed, the pattern is set. The rest can come later.

To illustrate the socialist nature of these proposed international laws, I want to go into detail, as briefly as I can, with respect to some of the most recent ILO conventions.

"Government Benefits"

At last June's conference, the ILO passed a convention entitled "Minimum Standards of Social Security." This was a draft of an international law providing "government benefits" for practically "all the ills the flesh is heir to." Under this proposal, government would pay people money for the following:

> Any condition requiring medical care of preventive or curative nature, including pregnancy, and any "morbid condition, whatever its cause." This would include hospitalization, medicines, etc.
>
> Loss of earnings due to sickness of any sort.
>
> Unemployment.
>
> Survival beyond a prescribed age.
>
> Employment injuries, including medical care, hospitalization and medicines.
>
> Babies. Government pays you for having them. The more you have, the more money you get.
>
> Childbirth, including medical care, hospitalization if necessary, and an allowance for suspension of earnings.
>
> Invalidity—which is defined as "Inability to engage in any gainful activity."
>
> Death benefits—that is, life insurance.

Financial Burden

Realizing apparently, that full compliance with all the provisions of this convention would break the financial back of any country which attempted it, it was voted that any member country could "ratify" the convention by adopting any three or more of the above category of benefits. By this political device a country could get credit among its voters for having "adopted the Social Security Convention" without the obligation of fulfilling more than a fraction of its terms.

When this proposal was first considered, in 1951, it contained a provision to the effect that insurance should be compulsory and subsidized by government, and that no insurance would be legal unless government paid at least one-fourth of the cost of the premiums.

This would put government in the insurance business, and very shortly put private companies out of it.

Mr. Edward Stark, a member of the Workers Delegation from Austria, said to Mr. A. D. Marshall, a member of our United States Employer Delegation, that—and I quote—"the proposed convention did not provide for the immediate destruction of the voluntary system of insurance, but would prevent its further extension." He was referring to the system which we have in the United States.

Socialistic Intentions

As a result of the violent opposition to this proposal by the employers serving on this committee, this particular article was omitted from the 1952 draft of the convention which was passed by the ILO last June. I cite it as an example of the *intentions* of the government-labor socialist bloc in control of the ILO. These intentions do not change. Sooner or later they will try it again.

The socialist bloc, however, succeeded in 1952 in writing socialized medicine into this Convention on Mimimum Standards of Social Security. The medical provisions of the convention, scattered throughout the document with respect to its various branches, add up to a complete program of what we in this country call socialized medicine.

One of our U. S. employer delegates, Leonard Calhoun, Washington attorney and social security expert, tried to have incorporated in this document a statement of the principle of voluntary association between physician and patient, in accordance with the "Bill of Rights" of the World Medical Association. He was voted down. You get the doctor and the hospital the government allots to you and like it.

"Maternity Protection"

In 1952 the ILO passed a convention providing for "maternity protection." Its main terms were these:

> An employed woman should be given at least 12 weeks off to have her baby, with free medical care and hospitalization if need be.
>
> During this period she would receive from the government in cash an amount equal to two-thirds of her pay.
>
> A woman cannot be discharged while on maternity leave.

Interruptions from work for nursing the baby "in cases where the matter is governed by or in accordance with laws and regulations" are to be counted as working hours, and paid for by the company.

Accompanying the convention is a recommendation which defines what the socialists think government really ought to do for pregnant women.

The recommendation provides for 14 weeks of maternity leave at *full* pay, instead of the 12 weeks provided in the Convention, extending the leave "if it seems necessary;" and nursing breaks totaling at least two half-hour periods per day (on employers' time).

The recommendation provides for every conceivable medical benefit, dental care, midwives, nursing, drugs and care furnished by such other professions as may be recognized to furnish services associated with maternity care. It further provides for further benefits in kind or in cash, such as layettes, milk or nursing allowances. There is no distinction between legitimacy and illegitimacy (delicately defined as "without benefit of marriage"). An unmarried girl need not worry about having a baby. Government will provide.

I sat on the committee discussing the maternity protection. At times I could not believe my ears.

One morning an incredible argument developed as to whether an employer might be *allowed* to supply any maternity benefits. The majority answer was emphatically "no."

The government representative from the United States serving on this committee was most emphatic on this point. She followed consistently the U. S. government stand on this issue. In its official communique to the ILO office, our United States government referred to "the undesirable practice now in effect in some countries whereby the employer pays maternity benefits directly out of his own funds to women workers in his employ."

Exceptions Denied

Following the lead of the U. S. government representative, the majority socialists agreed heartily with this point of view. It would never do for an employer to do anything for a pregnant woman. That might give rise to the impression that an employer had some concern as to the welfare of a pregnant woman. It seems that concern over pregnancy must be confined only to government. Employers must be taxed to take care of pregnant women, but the care and the money must be provided not by employers but by government, with a few well chosen words as to how kind government is to the working girl.

The government delegates from India and Pakistan pointed out that in their countries, government could not finance such benefits, but

that some employers were willing to set up such a plan. They asked, could not some exception be made for such a situation? Indeed not, said the committee.

They wrote into the maternity protection convention the clause, "In no case shall the employer be individually liable for the cost of such benefits due to women employed by him," which would even outlaw arrangements made through collective bargaining.

Under socialist philosophy, human considerations are not allowed the employer. They are permitted only to government.

For one whole afternoon government, labor and employer delegates, from nations all over the world, debated the question as to whether a woman nursing her baby, on time paid for by the employer, should do so in a single period of one hour per day, or two periods of one-half hour each. I recall that Israel held out for one hour and France was strong for two half-hour periods. On this great international point the representative of the United States government appeared neutral.

Layettes Discussed

One morning there was a long debate on the subject of whether the government should or should not furnish layettes.

Another technical point was this. If a mother was unable to furnish her own milk for her own baby she would have to buy it. Therefore the government should buy it for her. But if the government bought cow's milk for one mother, was that fair to the mother who was able to furnish her own milk? This led to the conclusion that a mother who could furnish her own milk should likewise be paid by the government for doing so, and while dispensing it she would also be paid an hourly rate by her employer.

I want you to bear in mind that these were matters solemnly discussed for inclusion in the terms of an international treaty—and then consider the words of paragraph 2, Article VI of the Constitution of the United States which says that "all treaties made or which shall be made under the authority of the United States shall be the supreme law of the land."

Were the men who wrote that paragraph in our Constitution thinking of layettes or mother's milk?

Gentlemen, in the days when that paragraph was written, nobody could have dreamed that proposed international treaties could ever be devised which would include subject matter such as is now included in ILO conventions. We need a new provision in our Constitution because a situation has developed of which its original drafters never could have conceived.

Exhibit No. 2. Issue No. 25 of The Provisional Record, dated June 26, 1952 of the 35th Conference of The International Labor Organization.

I wish to introduce issue No. 25 dated June 24, 1952 of The Provisional Record of The International Labour Conference, 35th Session, which contains the report of the Committee on Maternity Protection, and which incorporates the texts of the convention (draft treaty) and the recommendation, both of which were approved at the 35th 1952 Conference of ILO.

Labor Relations

Now let us step into the field of labor relations.

At the 1951 conference, the ILO passed a recommendation which contained two significant provisions. It stated, first, that under certain circumstances legislation should be enacted to enable governments to "negotiate, conclude, revise and renew collective agreements", and, second, "where appropriate, having regard to established collective bargaining practice, measures, to be determined by national laws or regulations and suited to the conditions of each country, should be taken to extend the application of all or certain stipulations of a collective agreement to all the employers and workers included within the industrial and territorial scope of the agreement."

Briefly summed up, what this means is that government should be empowered to take over collective bargaining and if it chose to do so to spread it by arbitrary decree, to establishments not covered by an agreement.

Also in the 1951 agenda and carried over into 1952 was a proposal masquerading under the innocuous title, "Cooperation between public authorities and employers and workers' organizations."

While the purposes of this proposal were cleverly concealed in the official text submitted to the conference, some of the workers made it plain that it was designed as a step in the direction of management of industry by joint committees of workers and management. In short, the objective seemed to me the equivalent of what we in this country call "co-determination," and in Germany today they call "mitbestimmungsrecht."

The plan, according to its original outline, would be established in three successive steps—namely, at the company level, the industry level, and finally, the national level.

The obvious intent of the socialists was to enforce "co-operation" by statute and then inject government into the "co-operation" machinery, especially at the national level. This would enable govern-

ment, in case of disagreement, to decide the issue. The end results would be (a) the immediate assumption by unions of a share in management, and (b) ultimate government direction of industry.

At the 1952 conference, owing chiefly to the strenuous objections of employer delegates, this whole proposal was limited to the plant level and softened to a brief recommendation saying, in effect that "co-operation is a good thing and should be encouraged." No convention or proposed international treaty was involved. But again I cite this as evidence of the basic intent of the socialist government-labor bloc in the ILO.

Unemployment Resolution

Now I want to go back to the 1950 conference. I am picking out certain things, in an effort to give you the over-all pattern which becomes only too plain to anyone who like myself has attended ILO conferences for four successive years.

In 1950 the ILO passed what it called a Resolution on Action against Unemployment. This was certainly a harmless title. Presumably everybody should be in favor of anything that would reduce unemployment. But I want to read you some paragraphs from this resolution, and ask you to consider them carefully and *think between the lines.*

> "1. All countries should establish as rapidly as possible systems of unemployment benefits adequate to enable involuntarily unemployed workers to maintain at least a socially acceptable minimum standard of living;
>
> "2. All Governments should ensure that their economic information services and their administrative machinery are adequate and, in particular, sufficiently flexible, to enable them to develop and to implement effective full employment policies * * *;
>
> "3. In seeking to maintain, by domestic measures, a level of aggregate demand appropriate to the maintenance of full employment, Governments should pay particular attention to—
>
> (a) the importance of achieving at the same time such basic social objectives as continuous economic growth, steady advance in standards of living and social progress, the promotion of which requires in particular efficient and flexible production, an equitable distribution of incomes, and a balance of investment, consumption and leisure adapted to the requirements of the particular community;

(b) The need for prompt compensatory action to offset fluctuations as they occur—either measures directed at particular sectors of the economy, such as measures to maintain agricultural incomes, stockpiling, public works and measures to stimulate activity in particular industries, or measures designed to increase demand generally, such as lower taxes, consumer subsidies and liberalisation of credit facilities."

There is much more of it, but that is enough to tell the story.

Barton's Opposition

Speaking in opposition to this resolution, William B. Barton, Manager of the Labor Relations Department of the Chamber of Commerce of the United States and a member of the U. S. Employer Delegation, said before the Plenary Session of the ILO:

> "Let us be specific and take a few examples of what this document really proposes. Subparagraph 3 (a) tells us, among other things, that governments should pay particular attention to achieving a balance of investment, consumption and leisure, adapted to the requirements of the particular community. What does that provision mean? Nobody knows. It may mean one thing to one person sitting in this audience and quite another thing to other persons. How then will the purpose set forth be achieved? The answer is easy. It is a language that professional economic planners just love. They would set up a bureau or a government agency and it would decide what these words mean. The planners running it would be the judges. The writers of the resolution were not satisfied with the language directed to investment and consumption but they are reaching out to the control also of leisure time. I do not want government planners controlling, or even suggesting, how I am to use my leisure time. I do not think you want it either. There may be some justification for such a measure in time of war, but God deliver us from all that in time of peace. In subparagraph 3 (c) they are also going to take jurisdiction over our social relationships. I do not want government planners laying out my social life and I do not believe you want them planning it for you at all."

On this occasion the ILO planners did not have the effrontery to make their proposal as a convention. The resolution, however, made clear their purpose—to achieve a government-dominated economy—and their past conduct shows that they will not hesitate to present the matter as a convention when they think the time is ripe.

Scheme for Tomorrow

Now suppose you add up, and put together, the convention on minimum standards of social security, the maternity protection convention, the collective bargaining recommendations, and the resolution on unemployment, all of which I have cited. What do you get?

You get a picture of the socialist scheme for tomorrow.

In those golden days, government runs everything.

Government regulates production, distribution and prices.

Government tells men where and how they must work.

Government takes over collective bargaining and makes it a function of the state.

And most important of all—government takes over the function of the family.

Apparently, in the ideal socialistic state practically all women are supposed to work. Their babies, legitimate and illegitimate alike, are financed by government benefits; and in due course they bring them to work with them, placing them in government-run nurseries and leaving their machines or typewriters, to nurse them on company time.

The place of the father in the scheme of things is reduced purely to the function of paternity. The state provides against a multitude of contingencies for which, in a free society, the husband and the father, as head of the family, is supposed to provide.

Under such circumstances, what becomes of the family? What becomes of the home? What is the object of the institution of marriage? What happens to the children, starting life in government or industrial nurseries? What are the people, save wards of the state?

Human Progress

Such a picture as an objective of human progress is to me a concept that is shocking. It violates every principle upon which I was brought up as a citizen of our United States.

But bear in mind it does not in the least shock the thought leaders and prime movers in the government-labor socialist bloc dominating the ILO.

Neither does it shock the delegates from the so-called underdeveloped countries, who, I am sorry to report, have been sold by world socialists on the idea that the United States is really a backward and a reactionary nation, and that modern socialist concepts represent the ideal on behalf of progress for tomorrow.

At the 1951 Conference, Charles P. McCormick, the United States employer delegate, delivered before the Conference an address in which he tried to explain the American system. He emphasized com-

petition as the main factor which in the long run advances the standard of living. He talked about quantity production and the desirability of having better things for more people at lower cost.

U. S. Delegation

But in the ILO our philosophy of living and doing business is brushed off as something obviously on its way out, lingering apparently only by accident, and not entitled to serious consideration. For example, in reply to Mr. McCormick's explanation of our free competitive system, Mr. Leon Jouhaux, the Workers' delegate from France, said to the Conference, "I would like to say a few words in reply to Mr. McCormick, who strove to give to economic liberalism a place which it perhaps held in the past but which it no longer holds today."

By this time, gentlemen, you may have in your mind an imaginary picture of an ILO delegation from the U. S. of America standing together on behalf of our free competitive system, in opposition to the socialist majority. I must report, however, that such is not the case.

The fact is that at the four conferences that I attended the two voting delegates representing the United States of America have voted on practically every issue *with* the socialist majority. They have voted in favor of every proposal which was contrary to the basic philosophy of the United States. They have voted in favor of every proposed treaty which would subject the domestic affairs of the United States to international socialist laws drafted by the ILO.

The United States labor delegate to the ILO likewise voted in favor of practically every proposed international socialistic law.

Senator O'Conor

In the critical statement that I have made concerning the conduct of the two U. S. Government voting delegates, I wish to exclude from such reference former Senator Herbert R. O'Conor of Maryland, who was one of the two U. S. Government delegates. Senator O'Conor only attended the 1949 and 1950 Conferences. During the limited time that Senator O'Conor was able to remain in attendance at each of the Conferences, and prior to each time that he was called back to Washington on important business of the Senate, his presence at the Conference, as well as his advice and guidance to *all* members of the entire U. S. Delegation, was constructive and helpful. It is too bad that more men of his type and calibre are not sent on missions of this sort.

The only people from the United States who steadfastly opposed such proposals were the members of the U. S. Employer Delegation.

You might have thought that the State Department would have been

on hand to do something where international treaties were concerned. They were there, however, only as "observers," and took no active part.

You might have thought that the United States Department of Commerce would have taken a hand in a situation in which employers as well as employees were concerned. They finally sent a representative over last year—but he, too, only observed.

Since, in ILO voting, government has two votes, labor has one vote, and employers one vote, employers were always voted down three to one. On almost all of these proposed international socialistic laws, the United States delegation as a body voted 3 in favor as compared to 1 against.

Exhibit No. 3. Personal reports of William L. McGrath covering the 32nd (1949), 33rd (1950), 34th (1951), 35th (1952) Conferences of The International Labor Organization.

Each year since 1949 following my return from each ILO Conference, I immediately prepared a personal report in which I set forth a resume of my observations and the highlights of some of the most outstanding experiences. I wish to submit as Exhibit 3 my four yearly reports, which give a more comprehensive picture of what transpired there than I am able to do in my brief statement presented today.

Exhibit No. 4. Reports of the United States Employers Delegations to The International Labor Organization covering the 1949, 1950, 1951, 1952 Conferences, published jointly by The Chamber of Commerce of the United States and The National Association of Manufacturers.

I also wish to submit as Exhibit 4 the official reports of the entire United States employer delegation to ILO issues as a joint publication by the Chamber of Commerce of the United States and The National Association of Manufacturers, in which is set forth the general views and observations of all members of the employer delegation. These reports have been issued each year since the 1949 Conference, and in my opinion deserve careful reading and consideration.

Opposition Disregarded

The general impression, therefore, given to the 60 nations present, was that the United States of America, as a whole, was entirely in favor of the socialistic state of tomorrow, constructed along the lines of proposed international laws drafted by the ILO. The opposition of the U. S. employer delegates was completely disregarded as representing what the Socialists called the traditional anti-labor attitude of employers.

This is another important reason why action should be taken in this country along the lines proposed by the resolution introduced by Senator Bricker.

The delegates from the various nations attending the ILO are important people in their various countries. They have taken home to their constituents the impression that the United States of America is completely in favor of socialism, and that it is only a question of time until we in this country go socialist as they have already gone socialist, or are planning to do so, in the near future.

In this connection, it is hard to realize what a small place the United States of America occupies in the thinking of the people who are planning the socialist world of tomorrow. In their eyes the world today is engaged in a great struggle between socialism and communism. In this struggle the American competitive system simply doesn't count. All we do is supply the money.

Government Policy

At last June's conference, we asked the United States government delegates flatly why they followed the policy they did. Their first answer was that their policy was dictated from Washington.

When pressed further, they indicated, in a general but not very informative fashion, that the idea was that the United States should play up to the socialists because the socialists would help us contain the communists. In other words, internationally speaking, we should be hypocrites. We should pretend to support measures which we know our people would never approve of, in the hope that European socialists would in turn be more sympathetic to our programs with respect to Russia.

My own personal point of view is that hypocrisy is no proper foundation for international relations. I think that the behavior of our United States delegates in voting in favor of socialist international laws which are contrary to the principles on which our freedom and our economy have been founded is unforgivable. I do not think we can defend ourselves against communism by pretending sympathy for a system which is equally repugnant to the basic principles of the Constitution of the United States.

I do not question the extent and importance of the socialist bloc which our U. S. delegates to the ILO have attempted to appease. There is held each year a convention of what is called the Socialist Internationale. Many of the delegates to the ILO stay over to attend this convention. A phrase often overheard in the corridors of the Palace of the United Nations, where the ILO conferences are held, is the phrase "international solidarity."

These socialists want to impose their ideas on every country they can, and in particular they want to impose them on the United States.

The Back Door

They are well aware that they cannot do it here by direct legislative means. But they are fully alert to the possibility that they might be able to achieve their ends by sneaking in through the back door. They may not be able to get socialism by legislation—but unless the loophole in our Constitution is plugged, they might be able to get socialism by treaty.

I have also heard it said that there is little need to worry about ILO Conventions because, under the ILO Constitution, a country with a Federal system such as ours may, if the subject is deemed appropriate for state rather than federal decision, simply refer the matter to the several states for such action as they may see fit to take. What this means is simply that the United States government can dodge the issue by passing the buck to the states.

But it may not be as simple as all that. Remember, the President or Senate itself may decide as to whether a Convention is, or is not, appropriate for Federal action. Suppose a convention arises which deals with matters now handled largely by the individual states. Is there anything to prevent some future President or Senate from arbitrarily taking the stand that the matter has now become one for federal action? In that case, the Senate could ratify a convention and by so doing over-ride large numbers of the existing state statutes and substitute instead a pattern of conformity to federal law.

Concern with Future

The issue cannot be dismissed by saying casually that of course even a bare quorum of the Senate could not conceivably ratify anything that would not be in conformity with the Constitution. We are not talking about just today. We are concerned with the entire future history of the United States.

My basic concern in this whole situation is that there exists in Geneva an international organization which is presuming to write laws covering domestic matters for every country in the world. I have been there myself, and I have seen it operate. By simply calling everything "international" the ILO, supposed in theory to confine itself to matters concerning labor, is now arrogating unto itself the right to prescribe domestic legislation, on any subject it selects, for nations the world over.

In this connection, Judge Florence Allen, of the United States Court of Appeals for the Sixth Circuit, says in her recent book entitled, "The Treaty as an Instrument of Legislation": "Does the fact that the ILO, in its Philadelphia Declaration stated broad human objectives, make

it the legislative agent of the nations of the world in problems other than those affecting labor? That the ILO thinks so was clearly evidenced in the 1949 Report of the Director, who said in his report: 'Today the role of the organization as an international parliament has become generally accepted.' "

Who is going to write the domestic laws for the United States of America? An international organization sitting in Geneva, or the Senate and House of Representatives of the United States, sitting in Washington? That, gentlemen, is the basic question I put before you today in connection with your consideration of Senate Joint Resolution No. 1.

Statement of L. ROY HAWES
for the Chamber of Commerce of the United States
before the
Subcommittee of the Senate Committee on the Judiciary
Considering S. J. Res. 1
March 4, 1953

Mr. Chairman and Members of the Committee:

My name is L. Roy Hawes, and I live in Sudbury, Massachusetts. I am a dairy farmer by occupation, and am Secretary of the Executive Committee of the National Grange. I served as agricultural advisor to the employer delegate at the International Labor Conference in Geneva in 1950 and 1951, and also served in the same capacity at the conference of American states members of ILO at Rio de Janeiro in 1952. I am testifying on this occasion for the Chamber of Commerce of the United States.

As a result of these experiences, I am gravely concerned with the type of conventions which come out of International Labor Conferences. The realization that some of them might, at a future time, become the law of our land is unthinkable. Should this happen, the framers of our Constitution would rise from their graves, point the finger of scorn at us and rightfully call us traitors. Even though the members of our employer delegations to these conferences do their best to avoid this result, they are at times helpless in the face of the demands of the other member nations.

I firmly and whole-heartedly believe in the ILO as one of the United Nations' specialized agencies. The public relations value of an ILO meeting, the exchange of ideas and the tearing down of social and economic barriers is of inestimable worth. It is a ray of hope to the under-developed countries, and provides a goal toward which they can work. The more advanced countries are happy to share their methods, techniques and experiences but are thwarted in their effort due to the statutory enforcement nature of the instrument.

Our Concept

The countries which need assistance the most have little or no voluntary labor-management relations and depend entirely upon government regulation for improving the lot of the worker. This is a direct violation of our concept that government should exert its influence only when voluntary efforts have failed.

It is also true that agriculture has lagged far behind industry in improving standards of employment. This is quite natural as the diversi-

fied nature of the undertaking makes it very difficult to regulate. As a matter of fact, this is the basic reason why our experience at ILO conferences has been so frustrating.

Unfortunately, many of the countries represented at ILO have not been adequately staffed in any of the tripartite divisions. Since the questions relating to industry appeared relatively more important in their eyes than the questions relating to agriculture, we found in the agricultural group many who were not expert in the field. The tendency of the person without an agricultural background or of the untrained person is to apply regulations which have worked successfully in industry to agriculture. This presents a hopeless situation because the two are as far apart as the poles.

Cart Before the Horse

Conventions adopted in the past three years concern "Minimum Wage Fixing Machinery in Agriculture" and "Holidays with Pay in Agriculture." This choice of subjects was most shortsighted and is like putting the cart before the horse. With such basic needs as "land distribution" and "land classification" to be decided, it seemed ironical to spend time determining just how many holidays a worker should have with pay when a great many of them work only four months out of the year and need, first of all, a *job* and not a holiday.

When the convention on holidays with pay in agriculture came up for final debate in 1952, the Indian Government pointed out the utter impracticability of the proposal in India. That nation's Government representative at the Conference stated that what the Indian farmer needs is not vacations with pay in agriculture, but more work. He emphasized that there are millions of farm workers in his country who worked only 150 to 200 days per year.

The United States Government representative on this occasion joined with our employer representative, moreover, in emphasizing the undesirability of this convention. Our Government representative pointed out that holidays (i. e. vacations) with pay were an accepted practice in the United States industry and commerce and to some extent even in agriculture. It was emphasized, however, that this practice had developed, not through legislation, but through collective bargaining and individual arrangements between employers and employees. It was explained to the Conference, moreover, that there would be great difficulty in the United States in adopting and implementing such a convention on vacations with pay.

But what did the Conference do? It voted 124 to 16, with 51 abstentions, in favor of adopting a convention together with a supplemental recommendation.

Hence, we have this draft treaty in international circulation with the official sanction of ILO as a United Nations' agency. It may come before us to plague us at any time.

Agricultural Wages

In 1951, when I attended the Conference as one of the United States employers delegation, we similarly objected to the convention on minimum wage fixing machinery in agriculture. This convention was nevertheless adopted, our United States Government and Worker Delegates combining against the United States Employer Delegate to vote in favor of it. Even though the wages of agricultural labor have traditionally not been viewed as a federal matter in our country, we find our Federal Government's representative voting in favor of this convention or draft treaty on the subject. This document, too, may come back to plague us some day.

The only possible way that this nation can give its best to the ILO is for its representatives to be relieved of the apprehension that some day, either by oversight or carelessness or by a plain trend toward socialism, some of these ILO conventions which are so contrary to our thinking and way of life, could be easily ratified and become the law of the land.

I, therefore, strongly endorse the Bricker Resolution S. J. Res. 1, as the simplest, surest, and safest means of protecting our laws against indiscriminate treaty ratification.

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